IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2)(b)

Description of the case.

Civil Writ Petition No. 1673 of 2002 (S/B)

Jai Singh ……. Petitioner

Versus

Vice Chancellor,
Kumaon University Nainital
& another …….. Respondents

Date of decision: 5 August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (**Yes**)

- Whether the reporters be allowed to see the judgment? (**Yes**)

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

WRIT PETITION NO. 1673 (S/B) 2002

Jai Singh S/o Shri Kunwar Singh negi,
At present working in Class IVth post,
In Kumaon Universit, Nainital. ..... Petitioners.

Versus

1. Vice Chancellor, Kumaon University,
   Nainital
2. Registrar, Kumaon University, Nainital
   ..... Respondents.

Sh. Rakesh Thapliyal, Advocate for the petitioner.
Sri B.D. Upadhyay, Advocate for Respondent.

HON'BLE P.C. PANT, J.

This Writ Petition has been moved under Article 226 of Constitution of India for mandamus directing the respondents to regularize services of petitioner in Class III post and also a writ in the nature of certiorari quashing the impugned orders dated 22.08.2002 and 29.08.2002 passed by the Vice Chancellor of Kumaon University whereby the representation of the petitioner has been rejected.

Brief facts of the case are that the petitioner was initially engaged in 1993 as daily wage employee against post of electrician, which is a class III post. In pursuance of G.O. dated 10.03.1998 the services of daily wage employees were regularized in which petitioner was also regularized as class IV employee with effect from 24.12.1998 instead of being absorbed

in class III post. It is alleged in the writ petition that the absorption of petitioner in class IV is illegal and arbitrary as junior to him were absorbed in class III post. It is further alleged that petitioner was a electrician having wireman trade certificate from I.T.I. obtained in 1991. It is further alleged in the writ petition that posts of electrician were vacant. Earlier a writ petition No. 1033 (S/B)/2002 was filed by the petitioner which was disposed of by this court on 09.08.2002 directing the University Authorities to decide the representation of the petitioner on merits within fifteen days. In pursuance whereof the Vice Chancellor vide order dated 29.08.2002 considered and rejected the representation of the petitioner. Hence this petition.

The respondents have filed the counter affidavit and contented the claim of the petitioner. In the counter affidavit it is admitted that the petitioner was engaged on daily wages considering his High School qualification with I.T.I. certificate in trade of wireman. Rest of the contents of the writ petition are denied as stated. It is mentioned in para 8 of the counter affidavit there was no post of electrician available for the petitioner for being absorbed though there was one post reserved for the scheduled caste candidate. For class III post of electrician the necessary qualification was high school with I.T.I. diploma in electrical trade. One Navin Chandra who has similar

qualification to that of petitioner of high school with certificate of I.T.I. in trade of wireman, was earlier appointed as electrician in the class III post but on being detected that said qualification was not sufficient for post of electrician the services of Navin Chandra were dispensed with, on which he filed writ petition No. 1935 (S/S)/2001 before this court which was dismissed on 01.05.2002. At the end of the counter affidavit the respondents have raised objection as to maintainability of the petition on the ground that the petitioner had efficacious alternative remedy under section 68 of U.P. State Universities Act, 1973 and the writ petition is liable to be dismissed.

I heard learned counsel for the parties at length and perused the record.

The main question before this court is whether petitioner is entitled for his regularization/ absorption in a class III post and was he wrongly deprived of said regularization by the respondents.

Admittedly the petitioner was engaged on daily wages to look after the electrical work in the University as he was having qualification of high school with certificate of I.T.I. in trade of wiremen. It is also not disputed that the petitioner was absorbed against class IV post and not against class III post. Sri Rakesh Thapaliyal, learned counsel for the petitioner argued that since the petitioner was having sufficient qualification for being absorbed in class III post his regularization against class IV post was against law. I

do not see much force in the contention of the learned counsel for the reason that for regularization there must be some post against which a person can be regularized. In the counter affidavit filed on behalf of the University it has been categorically stated that there was no post available for regularizing of the services of petitioner in class III post. The only post of electrician lying vacant with the University was reserved for the member of scheduled caste. As such, the respondents could not absorb the petitioner on the class III post of electrician for which they have a just explanation.

Sri B.D. Upadhayaya, learned counsel for the respondents raised objection as to maintainability of this writ petition in view of the provisions of section 68 of U.P State Universities Act, 1973 and argued that the petitioner should have preferred appeal before the Chancellor and there being alternative remedy the writ petition is not maintainable. In reply to this, on behalf of petitioner my attention was drawn to principle of law laid down ion Whirl Pool Corporation Vs Registrar of Trade Mark (1998) 8 Supreme Court Cases page 1 in which it has been held that even where the alternative remedy is available the writ petition under Article 226 of Constitution of India is maintainable if either the enforcement of any fundamental right is sought or violation of principle of natural justice is complained or virus of any Act is challenged. Since the petitioner has,

in para 8 of the writ petition, challenged the impugned order on the ground of Article 14 of Constitution of India, the Writ petition can not be thrown away merely on this ground.

But as discussed earlier, since neither the petitioner fulfilled the requisite qualification of certificate of electrical trade nor the post was available, the petitioner is not entitled to the relief claimed. The writ petition is dismissed. No order as to costs.

(P.C.Pant-J)

Dated: August 5, 2004.

S.S.Negi.